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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Israel Raz

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EXAMINER

MARTINEZ, DAVID E

ART UNIT

PAPER NUMBER

2181

MAIL DATE

DELIVERY MODE

04/21/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/722,914	Applicant(s) RAZ, ISRAEL	
	Examiner DAVID E. MARTINEZ	Art Unit 2181	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Reopening of Prosecution After Appeal Brief

In view of the Appeal Brief filed on 1/22/08, PROSECUTION IS HEREBY REOPENED.

New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Alford W. Kindred/

Supervisory Patent Examiner, Art Unit 2163

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-10 and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,023,343 to Hoang et al. (hereinafter Hoang)

1. With regards to claims 1, 9 and 17, Hoang teaches a method for managing outputs to peripheral devices in medical systems devices, said method comprising:

providing an instruction to control a peripheral [fig 1 elements 24 and 26 send print jobs (data objects) to a printer element 10, column 6 lines 45-59];

creating a data object based on the instruction [fig 1 elements 24 and 26 send print jobs (data objects created by host elements 24 and 26 – “input devices”) to a printer element 10, column 6 lines 45-61];

storing the data object in a second memory to be output to the peripheral device [fig 1 RAM memory element 34, column 7 lines 38-48, column 8 lines 3-7, lines 19-30, 47-55, column 3 lines 3-22] and

storing the data object in a first memory [fig 1, hard drive element 38] if the peripheral device [fig 1 element 36] is not accessible (claims 1 and 17), not active (claim 9) [column 3 lines 13-22] and not available to accept the data object [column 7 lines 38-48, column 8 lines 3-7, lines 19-30, 47-55, column 3 lines 3-22], wherein the first memory [fig 1, hard drive element 38] stores the data object for a longer term than a second memory [fig 1 RAM memory element 34].

Furthermore, claim 1 above calls for the peripheral device being used in medical system devices. A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

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2. With regards to claims 2, 10 and 18, Hoang teaches a method in accordance with claim 1 further comprising:

determining whether the peripheral device is available to accept the data object []; and
transferring the data object from the second memory [fig 1 RAM memory element 34] to the first memory [fig 1, hard drive element 38] upon determining that the peripheral device [fig 1 element 36] is not available [column 7 lines 38-48, column 8 lines 3-7, lines 19-30, 47-55, column 3 lines 3-22].

3. With regards to claims 5 and 13, Hoang teaches a method in accordance with claim 1 wherein said providing the instruction to provide the output comprises one of [←Please Note the Alternative Language]:

instructing to print [fig 1 elements 24 and 26 send print jobs (data objects created by host elements 24 and 26 – “input devices”) to a printer element 10, column 6 lines 45-61]; text, report, images,

instructing to record to a video cassette recorder;

instructing to electronically mail a copy of images to a remote location;

instructing to create a copy of the images on one of a floppy disk, a magneto-optical disk, a CD, a DVD, a flash memory card, and a digital versatile disc; and

instructing to create a copy of a patient's information on the digital versatile disc.

4. With regards to claims 6 and 14, Hoang teaches a method in accordance with claim 1 wherein said creating the data object based on the instructions comprises one of [←Please Note the Alternative Language]:

creating a first data object that instructs to print [fig 1 elements 24 and 26 send print jobs (data objects created by host elements 24 and 26 – “input devices”) to a printer element 10, column 6 lines 45-61];

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creating a second data object that instructs to record to a video cassette recorder;

creating a third data object that instructs to electronically mail a copy of images to a remote location;

creating a fourth data object that instructs to create a copy of images on one of a floppy disk, a magneto-optical disk, and a digital versatile disc; and

creating a fifth data object that instructs to create a copy of a patient's information on the digital versatile disc.

5. With regards to claims 7 and 15, Hoang teaches a method in accordance with claim 1 wherein said storing the data object in the first memory if the peripheral device that provides the output is not available to accept the data object comprises:

storing the data object in the first memory if the peripheral device that provides the output is at least one of deenergized and unoperational [column 7 lines 38-48, column 8 lines 3-7, lines 19-30, 47-55, column 3 lines 3-22].

6. With regards to claims 8 and 16, Hoang teaches a method in accordance with claim 1 wherein a processor is configured to create the data object based on the instructions and wherein said storing the data object in the first memory if the peripheral device that provides the output is not available to accept the data object comprises: storing the data object in the first memory if the peripheral device that provides the output is operationally de-coupled from the processor [column 7 lines 38-48, column 8 lines 3-7, lines 19-30, 47-55, column 3 lines 3-22].

7. With further regards to claim 9, Hoang teaches an imaging system comprising:

a source for transmitting signals [fig 1 elements 24 and 26 send print jobs (data objects created by host elements 24 and 26 – “input devices”) to a printer element 10, column 6 lines 45-61]; and

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a processor operationally coupled to said source [fig 1 element 14], said processor configured to do the steps as claim 1 above and thus rejected under the same rationale.

8. With further regards to claim 11, Hoang teaches an imaging system in accordance with claim 9 wherein said processor is configured to perform one of:

automatically obtain the data object from said first memory [column 11 lines 25-39 and 50-63].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,023,343 to Hoang et al. (hereinafter Hoang) in view of US Patent Application Publication No. US 2003/0053109 A1 to Lester et al. (hereinafter Lester).

9. With regards to claims 3, 11 and 19, Hoang is silent as to enabling a user to access the data object from the first memory. However, Lester teaches enabling a user to access a data object from a memory for the benefit of having full control of the data at any time [figs 5 and 6, paragraphs 2, 30 and 31].

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of both Hoang and Lester to enable a user to access the data object from the first memory for the benefit of having full control of the data at any time.

Claims 4, 12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,023,343 to Hoang et al. (hereinafter Hoang) in view of US Patent Application Publication No. US 2002/0063880 A1 to Raney.

10. With regards to claims 4, 12 and 20, Hoang is silent as to a method in accordance with claim 1 further comprising: acknowledging that the data object is received by the peripheral device if the data object is received by the peripheral device, however, teaches acknowledging that a data object is received by a peripheral device if the data object is received by the peripheral device for the benefit of providing important information to a user for the purpose of enabling the user to rectify and avoid problems [paragraphs 25, 6].

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hoang and Raney to acknowledge that the data object is received by the peripheral device if the data object is received by the peripheral device for the benefit of providing important information to a user for the purpose of enabling the user to rectify and avoid problems.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,898,827 to Kato et al. (hereinafter Kato).

11. With regards to claims 1, 9 and 17, Kato teaches a method for managing outputs to peripheral devices in medical systems devices, said method comprising:

providing an instruction to control a peripheral [column 10 line 50 to column 11 line 9];

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creating a data object based on the instruction [image data - column 10 line 50 to column 11 line 9];

storing the data object in a second memory to be output to the peripheral device [fig 2 RAM element 15 or 19, column 10 line 50 to column 11 line 9, column 7 lines 19-30] and

storing the data object in a first memory [fig 3 hard disk element 39] if the peripheral device [figs 2 and 3 element 1] is not accessible (claims 1 and 17), not active (claim 9) and not available to accept the data object [abstract, column 10 line 50 to column 11 line 9, column 2 lines 25 to 65, column 8 line 60 to column 9 line 25], wherein the first memory [fig 3 hard disk element 39] stores the data object for a longer term than a second memory [fig 2 RAM element 15 or 19].

Furthermore, claim 1 above calls for the peripheral device being used in medical system devices. A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

12. With further regards to claim 9, Kato teaches an imaging system comprising:
- a source for transmitting signals [column 10 line 50 to column 11 line 9]; and
 - a processor operationally coupled to said source [fig 2 element 10], said processor configured to do the steps as claim 1 above and thus rejected under the same rationale.

Response to Arguments

Applicant's arguments, see Appeal Brief, filed 1/22/08, with respect to the rejection(s) of claim(s) 1, 9 and 17 under U.S.C. 103(a) and directed to the Shukla reference have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon

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further consideration, a new ground(s) of rejection is made in view of Patent No. 6,023,343 to Hoang et al.

With regards to the Hoang reference, the Examiner relies on the term “not accessible” being defined as in being “not capable of being used”. (please refer to the enclosed definition of the word “accessible” found on the Merriam-Webster online Dictionary). The Hoang reference teaches the peripheral device being not accessible (claims 1, 17) as well as it not being in an active state (claim 9). The peripheral device is not accessible (not capable of being used) when the print jobs are temporarily stored in the hard disk drive to free up some of the RAM. This is a determination of whether system resources of the printer are free and is analogous to determining if the device is accessible (if RAM is not free then printer is not accessible (not capable of being used with new data) so then storing of new data in the hard drive takes place). As for the peripheral device not being active, Hoang teaches storing data in the hard drive of the peripheral device when the peripheral device isn’t active due to it being overburdened with too many requests [column 3 lines 13-22].

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID E. MARTINEZ whose telephone number is (571)272-4152. The examiner can normally be reached on 8:30-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Alford Kindred can be reached on 571-272-4037. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DEM

/Alford W. Kindred/
Supervisory Patent Examiner, Art Unit 2163